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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,787	01/21/2004	Jon Shannon Reed	FR-7295	6137

7590 06/15/2006

Mr. Edgar E. Spielman, Jr.
Patent & Trademark Division
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EXAMINER

LIPMAN, BERNARD

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/762,787	Applicant(s) REED ET AL.	
	Examiner Bernard Lipman	Art Unit 1713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-76 is/are pending in the application.
- 4a) Of the above claim(s) 4-8, 12-15, 24-27 and 32-76 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 9-11, 16-23 and 28-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/21/04&8/22/05&10/13/05.</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's election with traverse of Group I and the blend with polyethylene terephthalate, claims 1-3, 9-11, 16-23 and 28-31, in the reply filed on 17 April 2006 is acknowledged. The traversal is on the ground(s) that there is no undue burden on the examiner to search all the claims and that extra fees have been paid for the additional claims, which should cover the minor additional burden. This is not found persuasive because the burden of consideration of the additional inventions and species resides not just in the search but also in considerations of patentability. The additional fees paid do not provide the examiner with additional time to examine the application, an issue that needs to be addressed to the Director and is not within the purview of the examiner.

The requirement is still deemed proper and is therefore made FINAL.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 9-11, 16-23 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Falardeau et al, European Patent 0,201,411 or Kolich et al, U. S. Patent Publication 2002/0061983 in view of Neuberg et al, U. S. Patent 4,151,223.

Both references to Falardeau et al and Kolich et al teach the blending of flame-retardant amounts of anionically polymerized brominated polystyrene into polyesters wherein the polymers possess the degree of bromination as claimed. Reference to Neuberg et al specifically teaches the use of polyester compositions with flame-

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retardant polystyrene for use in the formation of fibers or filaments, for the formation of textiles. It would, therefore, be prima facie obvious to use the flame-retardant containing compositions taught by Falardeau et al and Kolich et al to make fibers and textiles as taught by Neuberg et al since both are to polyester compositions with flame-retardants which are well known for use in textiles, which provides motivation to one of ordinary skill in the art to use the compositions in this way with a reasonable expectation of success. The specific size of the fibers is conventional in textiles, and the properties of the product-by-process would reasonably be expected to be the same absent evidence to the contrary, *In re Fitzgerald Et Al*, 205 USPQ 594. The claims are, therefore, properly rejected under 35 USC 103 as obvious from the combined teachings of the references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bernard Lipman whose telephone number is 571-272-1105. The examiner can normally be reached on 8-5 Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on 571-272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Bernard Lipman
Primary Examiner
Art Unit 1713

BL/hs